

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2820**

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**Introduced by Assembly Member Chiu**

February 19, 2016

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An act to amend Section ~~1050~~ 396 of the Penal Code, relating to ~~criminal procedure~~ crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2820, as amended, Chiu. ~~Criminal procedure: continuances.~~  
*Crimes: price gouging: states of emergency.*

*Under existing law, upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that declaration, it is a misdemeanor with specified penalties for a person, contractor, business, or other entity to sell or offer to sell certain goods and services for a price that exceeds by 10% the price charged by that person immediately prior to the proclamation of emergency, except as specified.*

*This bill would revise the definitions of a state of emergency and a local emergency to mean a natural or manmade disaster or emergency caused by conditions such as, but not limited to, air pollution, earthquake, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, for which a state of emergency has been declared by the President of the United States or the Governor of California or for which a local emergency*

*has been declared by an official, board, or governing body vested with authority to make such a declaration in any city, county, or city and county in California, respectively. The bill would include the transportation of persons and towing services in the provisions described above. The bill would also specify that housing means any rental housing with an initial lease term of no longer than one year for purposes of these provisions. The bill would make other clarifying and conforming changes and make certain additional findings by the Legislature. By expanding the scope of an existing crime, this bill would create a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Existing law establishes the requirements for a continuance to be granted in a criminal case, including a showing of good cause. Existing law defines “good cause” for this purpose as including, but not being limited to, cases involving specified crimes, including murder and hate crimes, and where the prosecuting attorney assigned to the case has another trial, preliminary hearing, or motion to suppress in progress in that court or another court.~~

~~This bill would include among the crimes eligible to determine good cause, crimes against elders and dependent adults, as specified. The bill would also make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 396 of the Penal Code is amended to*
- 2     *read:*
- 3     396. (a) The Legislature hereby finds that during emergencies
- 4     and major disasters, including, but not limited to, *air pollution,*
- 5     earthquakes, fires, floods, ~~or~~ civil disturbances, *storms, and other*
- 6     *natural and manmade disasters,* some merchants have taken unfair
- 7     advantage of consumers by greatly increasing prices for essential
- 8     consumer goods and services. While the pricing of consumer goods
- 9     and services is generally best left to the marketplace under ordinary

conditions, when a declared state of emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this act to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. Further it is the intent of the Legislature that this section be liberally construed so that its beneficial purposes may be served.

(b) Upon the proclamation of a state of emergency ~~resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster~~ declared by the President of the United States or the Governor, or upon the declaration of a local emergency ~~resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster by the executive officer of~~ *by an official, board, or other governing body vested with authority to make such a declaration* in any county, city, or city and county, and for a period of 30 days following that declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency, the price represents no more than 10 percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency.

(c) Upon the proclamation of a state of emergency ~~resulting from an earthquake, flood, fire, riot, or storm~~ declared by the

1 President of the United States or the Governor, or upon the  
2 declaration of a local emergency ~~resulting from an earthquake,~~  
3 ~~flood, fire, riot, or storm by the executive officer of~~ *by an official,*  
4 *board, or other governing body vested with authority to make such*  
5 *a declaration in any county, city, or city and county, and for a*  
6 *period of 180 days following that declaration, it is unlawful for a*  
7 *contractor to sell or offer to sell any repair or reconstruction*  
8 *services or any services used in emergency cleanup for a price of*  
9 *more than 10 percent above the price charged by that person for*  
10 *those services immediately prior to the proclamation of emergency.*  
11 *However, a greater price increase is not unlawful if that person*  
12 *can prove that the increase in price was directly attributable to*  
13 *additional costs imposed on it by the supplier of the goods, or*  
14 *directly attributable to additional costs for labor or materials used*  
15 *to provide the services, provided that in those situations where the*  
16 *increase in price is attributable to the additional costs imposed by*  
17 *the contractor's supplier or additional costs of providing the service*  
18 *during the state of emergency, the price represents no more than*  
19 *10 percent above the total of the cost to the contractor plus the*  
20 *markup customarily applied by the contractor for that good or*  
21 *service in the usual course of business immediately prior to the*  
22 *onset of the state of emergency.*

23 (d) Upon the proclamation of a state of emergency ~~resulting~~  
24 ~~from an earthquake, flood, fire, riot, storm, or other natural disaster~~  
25 declared by the President of the United States or the Governor, or  
26 upon the declaration of a local emergency ~~resulting from an~~  
27 ~~earthquake, flood, fire, riot, storm, or other natural disaster by the~~  
28 ~~executive officer of~~ *by an official, board, or other governing body*  
29 *vested with authority to make such a declaration in any county,*  
30 *city, or city and county, and for a period of 30 days following that*  
31 *proclamation or declaration, it is unlawful for an owner or operator*  
32 *of a hotel or motel to increase the hotel or motel's regular rates,*  
33 *as advertised immediately prior to the proclamation or declaration*  
34 *of emergency, by more than 10 percent. However, a greater price*  
35 *increase is not unlawful if the owner or operator can prove that*  
36 *the increase in price is directly attributable to additional costs*  
37 *imposed on it for goods or labor used in its business, to seasonal*  
38 *adjustments in rates that are regularly scheduled, or to previously*  
39 *contracted rates.*

(e) The provisions of this section may be extended for additional 30-day ~~periods~~ *periods, as needed*, by a local legislative ~~body~~ *body, local official, the Governor*, or the California Legislature, if deemed necessary to protect the lives, property, or welfare of the citizens.

(f) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars (\$10,000), or by both that fine and imprisonment.

(g) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state.

(h) For the purposes of this section, the following terms have the following meanings:

(1) “State of emergency” means a natural or manmade disaster or emergency ~~resulting from an earthquake, flood, fire, riot, or storm~~ *caused by conditions such as, but not limited to, air pollution, earthquake, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease* for which a state of emergency has been declared by the President of the United States or the Governor of California.

(2) “Local emergency” means a natural or manmade disaster or emergency ~~resulting from an earthquake, flood, fire, riot, or storm~~ *caused by conditions such as, but not limited to, air pollution, earthquake, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease* for which a local emergency has been declared by ~~the executive officer or governing body of any city or county~~ *an official, board, or other governing body vested with authority to make such a declaration in any county, city, or city and county* in California.

(3) “Consumer food item” means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

(4) “Repair or reconstruction services” means services performed by any person who is required to be licensed under the Contractors’ State License Law (Chapter 9 (commencing with

1 Section 7000) of Division 3 of the Business and Professions Code),  
2 for repairs to residential or commercial property of any type that  
3 is damaged as a result of a disaster.

4 (5) “Emergency supplies” includes, but is not limited to, water,  
5 flashlights, radios, batteries, candles, blankets, soaps, diapers,  
6 temporary shelters, tape, toiletries, plywood, nails, and hammers.

7 (6) “Medical supplies” includes, but is not limited to,  
8 prescription and nonprescription medications, bandages, gauze,  
9 isopropyl alcohol, and antibacterial products.

10 (7) “Building materials” means lumber, construction tools,  
11 windows, and anything else used in the building or rebuilding of  
12 property.

13 (8) “Gasoline” means any fuel used to power any motor vehicle  
14 or power tool.

15 (9) “Transportation, freight, and storage services” means any  
16 service that is performed by any company that contracts to move,  
17 store, or transport personal or business property or *that rents*  
18 *equipment for those purposes purposes, including towing services,*  
19 *or any service that provides transportation to persons.*

20 (10) “Housing” means any rental housing ~~leased on a~~  
21 ~~month-to-month term with an initial lease term of no longer than~~  
22 *one year.*

23 (11) “Goods” has the same meaning as defined in subdivision  
24 (c) of Section 1689.5 of the Civil Code.

25 (i) Nothing in this section shall preempt any local ordinance  
26 prohibiting the same or similar conduct or imposing a more severe  
27 penalty for the same conduct prohibited by this section.

28 (j) A business offering an item for sale at a reduced price  
29 immediately prior to the proclamation of the emergency may use  
30 the price at which it usually sells the item to calculate the price  
31 pursuant to subdivision (b) or (c).

32 *SEC. 2. No reimbursement is required by this act pursuant to*  
33 *Section 6 of Article XIII B of the California Constitution because*  
34 *the only costs that may be incurred by a local agency or school*  
35 *district will be incurred because this act creates a new crime or*  
36 *infraction, eliminates a crime or infraction, or changes the penalty*  
37 *for a crime or infraction, within the meaning of Section 17556 of*  
38 *the Government Code, or changes the definition of a crime within*  
39 *the meaning of Section 6 of Article XIII B of the California*  
40 *Constitution.*

1     SECTION 1. ~~Section 1050 of the Penal Code is amended to~~  
2     ~~read:~~

3     1050. (a) ~~The welfare of the people of the State of California~~  
4     ~~requires that all proceedings in criminal cases shall be set for trial~~  
5     ~~and heard and determined at the earliest possible time. To this end,~~  
6     ~~the Legislature finds that the criminal courts are becoming~~  
7     ~~increasingly congested, resulting in adverse consequences to the~~  
8     ~~welfare of the people and the defendant. Excessive continuances~~  
9     ~~contribute substantially to this congestion and cause substantial~~  
10    ~~hardship to victims and other witnesses. Continuances also lead~~  
11    ~~to longer periods of presentence confinement for those defendants~~  
12    ~~in custody and the concomitant overcrowding and increased~~  
13    ~~expenses of local jails. It is therefore recognized that the people,~~  
14    ~~the defendant, and the victims and other witnesses have the right~~  
15    ~~to an expeditious disposition, and to that end it shall be the duty~~  
16    ~~of all courts and judicial officers and of all counsel, both for the~~  
17    ~~prosecution and the defense, to expedite these proceedings to the~~  
18    ~~greatest degree that is consistent with the ends of justice. In~~  
19    ~~accordance with this policy, criminal cases shall be given~~  
20    ~~precedence over, and set for trial and heard without regard to the~~  
21    ~~pendency of, civil matters or proceedings. In further accordance~~  
22    ~~with this policy, death penalty cases in which both the prosecution~~  
23    ~~and the defense have informed the court that they are prepared to~~  
24    ~~proceed to trial shall be given precedence over, and set for trial~~  
25    ~~and heard without regard to the pendency of, other criminal cases~~  
26    ~~and civil matters or proceedings, unless the court finds in the~~  
27    ~~interest of justice that it is not appropriate.~~

28    (b) ~~To continue a hearing in a criminal proceeding, including~~  
29    ~~the trial, (1) a written notice shall be filed and served on all parties~~  
30    ~~to the proceeding at least two court days before the hearing sought~~  
31    ~~to be continued, together with affidavits or declarations detailing~~  
32    ~~specific facts showing that a continuance is necessary and (2)~~  
33    ~~within two court days of learning that he or she has a conflict in~~  
34    ~~the scheduling of a court hearing, including a trial, an attorney~~  
35    ~~shall notify the calendar clerk of each court involved, in writing,~~  
36    ~~indicating which hearing was set first. A party shall not be deemed~~  
37    ~~to have been served within the meaning of this section until that~~  
38    ~~party actually has received a copy of the documents to be served,~~  
39    ~~unless the party, after receiving actual notice of the request for~~  
40    ~~continuance, waives the right to have the documents served in a~~

1 timely manner. Regardless of the proponent of the motion, the  
2 prosecuting attorney shall notify the people's witnesses and the  
3 defense attorney shall notify the defense's witnesses of the notice  
4 of motion, the date of the hearing, and the witnesses' right to be  
5 heard by the court.

6 (e) ~~Notwithstanding subdivision (b), a party may make a motion~~  
7 ~~for a continuance without complying with the requirements of that~~  
8 ~~subdivision. However, unless the moving party shows good cause~~  
9 ~~for the failure to comply with those requirements, the court may~~  
10 ~~impose sanctions as provided in Section 1050.5.~~

11 (d) ~~When a party makes a motion for a continuance without~~  
12 ~~complying with the requirements of subdivision (b), the court shall~~  
13 ~~hold a hearing on whether there is good cause for the failure to~~  
14 ~~comply with those requirements. At the conclusion of the hearing,~~  
15 ~~the court shall make a finding whether good cause has been shown~~  
16 ~~and, if it finds that there is good cause, shall state on the record~~  
17 ~~the facts proved that justify its finding. A statement of the finding~~  
18 ~~and a statement of facts proved shall be entered in the minutes. If~~  
19 ~~the moving party is unable to show good cause for the failure to~~  
20 ~~give notice, the motion for continuance shall not be granted.~~

21 (e) ~~Continuances shall be granted only upon a showing of good~~  
22 ~~cause. Neither the convenience of the parties nor a stipulation of~~  
23 ~~the parties is, in and of itself, good cause.~~

24 (f) ~~At the conclusion of the motion for continuance, the court~~  
25 ~~shall make a finding whether good cause has been shown and, if~~  
26 ~~it finds that there is good cause, shall state on the record the facts~~  
27 ~~proved that justify its finding. A statement of facts proved shall~~  
28 ~~be entered in the minutes.~~

29 (g) (1) ~~When deciding whether or not good cause for a~~  
30 ~~continuance has been shown, the court shall consider the general~~  
31 ~~convenience and prior commitments of all witnesses, including~~  
32 ~~peace officers. Both the general convenience and prior~~  
33 ~~commitments of each witness also shall be considered in selecting~~  
34 ~~a continuance date if the motion is granted. The facts as to~~  
35 ~~inconvenience or prior commitments may be offered by the witness~~  
36 ~~or by a party to the case.~~

37 (2) ~~For purposes of this section, "good cause" includes, but is~~  
38 ~~not limited to, cases that meet both of the following criteria:~~

39 (A) ~~The case involves one or more of the following:~~

40 (i) ~~Murder, as defined in subdivision (a) of Section 187.~~



1     (ii) ~~Allegations of stalking, as defined in Section 646.9.~~  
2     (iii) ~~Violation of one or more of the sections specified in~~  
3     ~~subdivision (a) of Section 11165.1 or Section 11165.6.~~  
4     (iv) ~~Domestic violence, as defined in Section 13700.~~  
5     (v) ~~A case being handled in the California Career Criminal~~  
6     ~~Prosecution Program pursuant to Sections 999b to 999h, inclusive.~~  
7     (vi) ~~A hate crime, as defined in Title 11.6 (commencing with~~  
8     ~~Section 422.6) of Part 1.~~  
9     (vii) ~~A crime against an elder or dependent adult as specified~~  
10    ~~in Section 368.~~  
11    (B) ~~The prosecuting attorney assigned to the case has another~~  
12    ~~trial, preliminary hearing, or motion to suppress in progress in that~~  
13    ~~court or another court.~~  
14    ~~A continuance under this paragraph shall be limited to a~~  
15    ~~maximum of 10 additional court days.~~  
16    (3) ~~Only one continuance per case may be granted to the people~~  
17    ~~under this subdivision for cases involving stalking, hate crimes,~~  
18    ~~or cases handled under the California Career Criminal Prosecution~~  
19    ~~Program. A continuance granted to the people in a case involving~~  
20    ~~stalking or handled under the California Career Criminal~~  
21    ~~Prosecution Program shall be for the shortest time possible, not to~~  
22    ~~exceed 10 court days.~~  
23    (h) ~~Upon a showing that the attorney of record at the time of~~  
24    ~~the defendant's first appearance in the superior court on an~~  
25    ~~indictment or information is a Member of the Legislature of this~~  
26    ~~state and that the Legislature is in session or that a legislative~~  
27    ~~interim committee of which the attorney is a duly appointed~~  
28    ~~member is meeting or is to meet within the next seven days, the~~  
29    ~~defendant shall be entitled to a reasonable continuance not to~~  
30    ~~exceed 30 days.~~  
31    (i) ~~A continuance shall be granted only for that period of time~~  
32    ~~shown to be necessary by the evidence considered at the hearing~~  
33    ~~on the motion. Whenever a continuance is granted, the court shall~~  
34    ~~state on the record the facts proved that justify the length of the~~  
35    ~~continuance, and those facts shall be entered in the minutes.~~  
36    (j) ~~Whenever it appears that a court may be required, because~~  
37    ~~of the condition of its calendar, to dismiss an action pursuant to~~  
38    ~~Section 1382, the court must immediately notify the Chair of the~~  
39    ~~Judicial Council.~~

- 1     ~~(k) This section does not apply when the preliminary~~  
2     ~~examination is set on a date less than 10 court days from the date~~  
3     ~~of the defendant's arraignment on the complaint, and the~~  
4     ~~prosecution or the defendant moves to continue the preliminary~~  
5     ~~examination to a date not more than 10 court days from the date~~  
6     ~~of the defendant's arraignment on the complaint.~~  
7     ~~(l) This section is directory only and does not mandate dismissal~~  
8     ~~of an action by its terms.~~